

DEVELOPMENT SERVICES DEPARTMENT

Administration 797-1101

Building & Occupational Licensing 797-1111

Code Compliance 797-1121

Engineering 797-1113

Planning & Zoning 797-1103

TOWN OF DAVIE 6591 ORANGE DRIVE, DAVIE, FLORIDA 33314-3399 (954) 797-1000

MEMORANDUM

DS 11-05-01

TO: Mayor and Town Councilmembers
Thomas J. Willi, Town Administrator

FROM: Mark A. Kutney, AICP, Development Services Director

DATE: November 14, 2001

RE: Request for Council Determination Of Exemption From Telecommunications
Moratorium- Florida Power & Light, 4000 Davie Road Extension

On July 3, 2001, the Davie Town Council adopted Ordinance No. 2001-035 (Attachment B) which declared a six month moratorium on the acceptance of applications for Wireless Telecommunications Towers and Antennas and on the issuance of permits and approvals for the construction of Wireless Telecommunications Towers.

The aforementioned ordinance also provided for exemptions. Jean G. Howard, Senior Attorney on behalf of the Florida Power & Light Company has filed a written request and justification (Attachment A) for an exemption determination. More specifically, Section 2.2 of the ordinance states "any tower which is determined by the Town Council to be necessary to any governmental utilities or emergency communications system".

In essence, FP&L is requesting that Town Council grant the utility an exemption from Ordinance No. 2001-035 and also permit FP&L to increase the size of the existing tower from the current 180 feet tall to 300 feet or taller. Mr. Howard states: "The requested tower is to be designed and constructed as an unguyed lattice tower and to fall inward, within the property in the event there are winds in excess of those outlined in the stringent South Florida Building Code."

Please note that staff advised FP&L that the current tower of 180 feet is actually larger than the 150 feet permitted by the current code in Section 12-506(D)(3). **Therefore, if Town Council is inclined to grant this exemption request to FP&L, the Utility Company must still make petition to the Town Council for a variance relative to the height of the existing/new lattice tower.**

Should you have any questions, please advise.

cc: Monroe Kiar, Town Attorney



Florida Power & Light Company, P. O. Box 029100, Miami, FL 33102-9100

*cc. Clerkship
11/21/01 asenda*

Attachment "A"

October 19, 2001



Writer's Direct Dial:
(305) 552-3929

Via Hand Delivery

Tom Willi, Town Administrator
Town of Davie
6591 Orange Dr.
Davie, Florida 33314-3399

Re: Request for Council Determination of
Exemption from Moratorium:
Application No. 01 00004 156

Dear Mr. Willi:

At the suggestion of Mr. Kutney, Director Development Services Department, and Mr. Kiar, Town Attorney, we are writing to you requesting review by the Town Council as to whether the application of Florida Power & Light Company ("FPL") to construct a radio tower on FPL's property located at 4000 Davie Road Extension falls within the exemptions from moratorium created by Town Ordinance No. 2001-35. FPL respectfully submits that the proposed radio is necessary to both governmental utilities and emergency communications systems and, therefore, falls within the exemptions.

Background

As part of its electric utility operations, FPL has voice and data radio communication systems that are used by FPL to dispatch field crews to perform restoration services. The current systems deployed were implemented in 2001. FPL has received input from the field users that operate in south Broward and provide restoration service for the Town of Davie that the system is performing poorly. They have formally identified that the current communications poses a safety risk. These radio communications are used for the following:

- (1) Daily restoration of electrical service. FPL crews work daily with electrical voltages up to 13,000 volts and depend on radio communications as part of their safe work environment;
- (2) Emergency notification to dispatchers from field crews in life threatening situations; and
- (3) Mobilization and deployment of restoration crews after a disaster (hurricanes, floods, tornadoes, vandalism and terrorist activities).

In the initial design of these critical systems, FPL attempted to utilize the existing radio tower at FPL's Gulfstream Service Center at 4000 Davie Road Extension. The system that FPL deployed performs optimally between 300 and 400 feet. The tower at Gulfstream Service Center is only 180 feet tall. It was constructed in the early 1980's when FPL's technology and needs were much different. This is the only tower in the Dade, Broward and Palm Beach counties used by FPL that is not 300 feet or taller. FPL has reviewed possible options to construction of a new tower on this site, including use of another tower or changing the design of the system. None were found. No towers 300 feet or taller exist within three miles of the FPL site. Under the frequency loading requirements of the Federal Communications Commission ("FCC") and spectrum availability, FPL is not eligible to license the additional frequencies necessary to increase the number of sites and provide the required communications.

The only solution that FPL's engineering staff has identified to remedy the communication problem in south Broward is to replace the existing communications structure with a tower that is 300 feet or taller.

Town Ordinance No. 2001-35

On July 3, 2001, FPL submitted an application for a permit to install a 300 foot high radio tower on the FPL property at 4000 Davie Road Extension. On July 19, 2001, we received notice that the application would not be processed because there was a moratorium in effect on all tower and antenna collocations. A copy of that notice is attached.

We believe that as an electric utility regulated by the Florida Public Service Commission, Florida Power & Light Company falls within not just one, but both exemptions from such moratorium as set forth in Section 2 of the Town's ordinance. Such a determination would allow the FPL application to continue through the Town's review and approval process.

The construction of the tower is essential to the existing operations of the electric utility in its provision of electric service. Because the Town's utilities, including water and sewer, and those of any other governmental entity within FPL's service territory, at some point, all depend upon the provision of electric service by FPL for their operation, we believe this tower should be considered "necessary to any governmental utilities."

We believe that this tower also falls within the exemption for emergency communications systems. Radio communication is a critical factor in emergency restorations of the electric system involving the safety of the public as well as of the FPL crews. For example, the FPL

crew member has a portable radio containing an emergency declaration feature--a red button that the crew member can push sending immediate notification of an emergency situation to the FPL dispatch centers. The emergency situation may involve the personal safety of a crew member or it may involve a public safety emergency such as downed wires in standing water. Moreover, the ability of the electric utility to communicate with the FPL crews is also critical in that it enables FPL to make determinations and take actions which affect the ability of the communications companies, government and other entities to perform their emergency functions. Electrical service is a critical and essential infrastructure service upon which all other infrastructures and emergency services (including police, fire, and emergency rescue communications systems) are dependent. Communications companies require electricity in order to complete their transmittals--even the wireless communications companies.

After storms, hurricanes, or other destructive occurrences, FPL is typically the first organization to enter storm, hurricane or other disaster affected areas to ensure a safe environment for others to enter and begin recovery, rescue and restoration efforts. Police, fire, rescue, the military and others depend on FPL's assessment of a safe electrical environment so they can enter the affected area. The proposed tower is essential in these recovery, rescue and restoration efforts.

Recent events have confirmed the critical nature of the existing utility infrastructure. The FBI has identified the electric infrastructure as one of the key national infrastructures that require extra security measures because of America's dependence on it.

The requested tower is to be designed and constructed as an unguyed lattice tower and to fall inward, within the property in the event there are winds in excess of those outlined in the stringent South Florida Building Code. FPL construction requirements include following the national communications tower construction standard TIA/EIA-222-F. FPL assumes that the Town of Davie is focused on reducing the requirement for additional towers in the Town of Davie. To accommodate this, FPL is willing to construct the tower to support four other communication systems, such as a cellular system.

One necessary early approval step has been completed for the proposed tower -- the FAA has ruled (01-ASO-5294-OE) that the proposed tower would pose no hazard to aviation and requires certain minimum standard lighting. FPL would deploy a lighting system that provides a white strobe during daytime hours and a blinking red light at night. Although more costly, this system is more in keeping with the community environment.

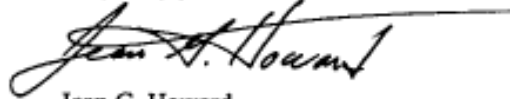
FPL's application is for the purpose of correcting an existing and significant problem. The existing tower is simply not high enough to provide FPL with the necessary communication. This situation cannot be corrected merely by collocation at this site. The existing tower is itself inadequate and cannot be made adequate.

Request to be Placed on Town Agenda for Exemption Determination

FPL is here requesting only that that Town Council determine that the proposed Tower falls within the exemptions to the moratorium created by Town Ordinance No. 2001-35. This will allow the FPL application to continue to be processed through the Town's normal procedures and requirements for tower construction. We request that, if possible, this item be made part of the agenda for the next Town Council Meeting.

Thank you.

Very truly yours,



Jean G. Howard
Senior Attorney

JGH/ca

Enc.

cc: M. Kutney, AICP
M. Kiar, Esquire
T. Lewis
E. Stonebraker
L. Shatas

BP255U02	Town of Davie	7/19/01
Application Tracking Action Log Maintenance		12:22:05

Application number : 01 00004156
 Address : 4000 DAVIE RD EXT
 Application type : STR: ANTENNAE
 Path/step/seq : A 01 00
 Agency : PLANNING & ZONING

Type information, press Enter.

Action date : 071801
 Action by (F4) : CKL
 Action code (F4) : REJ
 Time spent (hours) : .00
 Correction report item . . : N Y=Yes,N=No

Seq	Comments	Print
1.00	THERE IS A MORATORIUM ON EFFECT ON ALL TOWERS AND CO.	-
2.00	LOCATIONS	-
3.00		-
4.00		-

More...

F3=Exit F4=Prompt F9=Add std comment F12=Cancel F21=User defaults

ORDINANCE NO. 2001-35

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA DECLARING A SIX MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR THE CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWERS; PROVIDING FOR EXCEPTIONS; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

WHEREAS, pursuant to Section 2(b), Article VIII, of the Florida Constitution, and §166.021, Florida Statutes, Town of Davie is authorized and required to protect the public health, safety, and welfare and may exercise any power for a governmental purpose except when expressly prohibited by law, and, pursuant to this authority and §163.3202, Florida Statutes, Town of Davie has enacted land development regulations, consistent with its adopted comprehensive plan, which protect the quality of life in the Town;

WHEREAS, the Town adopted Ordinance Number 97-16 on March 19, 1997, implementing regulations regarding locations and criteria for commercial communication towers; and

WHEREAS, since that time, technological innovation has been explosive; and demand for such facilities has necessitated the need to revisit potential deficiencies in the Town's regulations; and

WHEREAS, good land planning and concern for the quality of life in the Town of Davie dictate a further review of locational criteria and associated standards concerned with the installation of such facilities; and

WHEREAS, the Telecommunications Act of 1996 makes it clear that, as long as local zoning requirements satisfy certain conditions as codified within the Act, the authority of local governments over the placement, construction and modification of wireless telecommunications towers ("towers") is neither limited nor effected; and

WHEREAS, the Town is cognizant of the need for modern communications and for effective competition in the field and also desires that the Town residents receive adequate wireless telecommunications services, provided that the facilities are designed and located to minimize safety and aesthetic concerns; and

WHEREAS, industry and governmental agencies that have studied current technology have established that towers can be designed and installed in ways that will minimize safety and aesthetic concerns; and

WHEREAS, these design and installation methods need improvement in the Town Code; and

WHEREAS, the Town staff requires a reasonable time period to address the technical aspects of the telecommunications industry as they impact land use decisions so that the Town Council can properly plan for and implement an efficient and cost-effective wireless communications services network that meets national and local goals and legislative mandate; and

WHEREAS, case law has held that six months is a reasonable period of time under the Act for the Town to place a moratorium on the issuance of special use permits for wireless communications facilities, Nat'l Telecomm. Advisors v. Town of Stockbridge, 27 F. Supp. 2d 284 (D. Mass. 1998).

WHEREAS, in view of the foregoing, a situation exists which requires an immediate moratorium on commercial communication towers; and

WHEREAS, this moratorium will be of temporary impact to real properties within the Town; and

WHEREAS, this moratorium is being enacted in good faith, without unjust discrimination, in reliance upon the decision of Sprint Spectrum, L.P. v. City of Medina, 924 F. Supp. 1036 (W.D. Wash. 1996), and Nat'l Telecomm. Advisors v. Town of West Stockbridge, 27 F. Supp. 2d 284 (D. Mass. 1998), and is of the minimum feasible duration;
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

SECTION 1. This Ordinance is hereby adopted and shall take effect immediately upon its passage and shall continue for a period of six (6) months from the date of adoption, unless terminated earlier or extended by subsequent action of the Town Council.

SECTION 2. The following applications may be considered exemptions to this Ordinance:

1. Any complete application for a tower which was on file prior to the first reading of the Ordinance and which is subsequently determined by the Town Council to meet all applicable requirements on the Land Development Code;
2. Any tower which is determined by the Town Council to be necessary to any governmental utilities or emergency communications system.

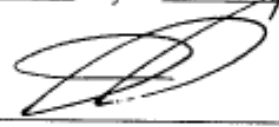
SECTION 3. All ordinances or parts of ordinances in conflict herewith are suspended during the time period set forth in Section 1 above.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, then such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portions of this Ordinance.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

PASSED ON FIRST READING THIS 20th day of June, 2001

PASSED ON SECOND READING THIS 3rd day of July, 2001



MAYOR/COUNCILMEMBER

ATTEST:



TOWN CLERK

APPROVED THIS 3rd day of July, 2001